

Elizabeth Denham
Information Commissioner
Information Commissioner's Office
Wycliffe House, Water Ln
Wilmslow
SK9 5AF

via email only: casework@ico.org.uk

Date: 16th October 2018

Dear Ms Denham,

RE: disclosure process in rape cases currently grounded in an unlawful basis of 'consent'

I am writing to you, with the support of a number of organisations who are listed below, in relation to recent findings regarding the rights of victims of rape in the criminal justice process, which we wish to bring to your attention for investigation.

First, police forces across England and Wales are relying on a variety of documents based on the 'Stafford Statements'¹ to gain access to victims' personal records, such as their medical history, psychiatric records, social services, educational establishments, counselling records and family court proceedings to inform the investigative stage after a crime such as rape or sexual assault is reported.

The police are currently using 'consent' as the lawful basis to obtain this data. However, it is clear they are falling way short of meeting the 'high standard' that has been set under the new General Data Protection Regulation (GDPR) which I believe makes this practice unlawful. As such, I wish to request an investigation into how these practices are being deployed by police forces across England and Wales.

¹ The case of R(B) v Stafford Crown Court [2007] 1All ER confirmed the complainant's Article 8 Human Right to privacy in relation to disclosure. Complainants should be informed of any request from the defence for their records and be given an opportunity to make representations at a hearing. Complainants of sexual offences are being asked to sign away their rights consenting to disclosure insofar as necessary for a fair trial, precluding any requirement for a hearing. The CPS require police to gather third party material from a range of sources including healthcare, social services stating unless this is done they will not consider a charge.

I understand that in the course of police investigation, it may be necessary to access a victim's personal data as set out in the CPIA code of practice and that this must also be 'reasonable, proportionate and relevant'. I also understand that this access to data is not likely to be in itself unlawful, more that, 'consent' is not the right lawful basis for the police to access this.

Further, under the new GDPR legislation, victims should be able to withdraw their consent at any time which this current process doesn't allow for.

Moreover, even where the lawful basis is established, the fundamental principles of transparency and data minimisation must still be adhered to, which is clearly not happening at the moment.

This is in stark contrast to suspects and offenders, where police rely on PACE to extract the data from the phones of suspects.

Secondly, I am deeply concerned that where consent is granted by victims in order to access their data, in particular their digital data, as part of the police investigation process it is being used as a type of screening tool. Vulnerable victims are being told that in order for their case to progress they have to essentially, sign away their rights to privacy. Victims who decline to grant access having their cases dropped at alarming rates, despite robust evidence which supports otherwise.

Ultimately, I would like to see a set of best practice recommendations developed out of the findings of the investigation which would inform national guidance and develop clear and appropriate parameters for police to adhere to when requesting data from victims of crime.

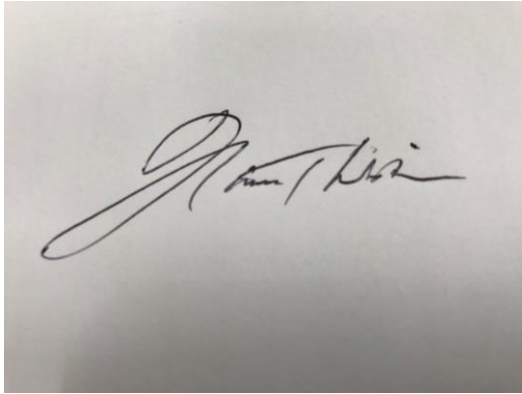
I am happy to share anonymised case studies of victims and survivors I have spoken to who have given me their consent to progress the investigation and improve outcomes for all victims across the U.K.

I do not believe that police forces are acting deliberately but more through a complete lack of understanding of GDPR and out of date guidance that does not take into account victims' rights to privacy.

Rather than simply addressing individual forces, I believe that this practice is currently in use by all forces across England and Wales. Therefore, I am calling for a wholesale review in order to safeguard victim's rights without this damaging their access to justice.

A handwritten signature in black ink, appearing to read 'C. Waxman', written over a light grey grid background.

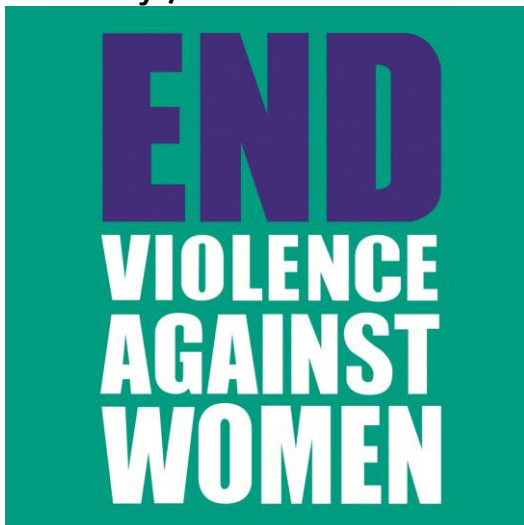
Claire Waxman
Independent Victims' Commissioner
Mayor's Office for Policing and Crime



Harriet Wistrich, Founding Director



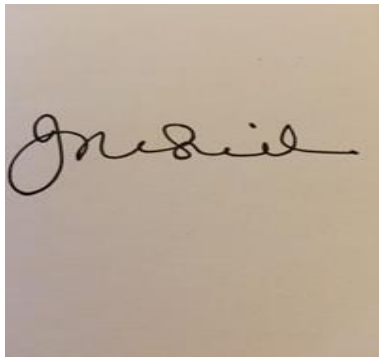
Rachel Kryz, Co Director



Corey Stoughton, Acting Director

LIBERTY

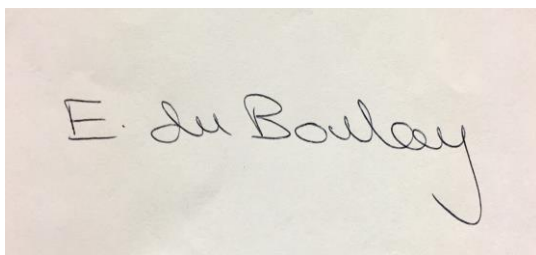
PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

A rectangular photograph of a handwritten signature in black ink on a light-colored background. The signature is cursive and appears to read 'Joan Smith'.

Joan Smith, Co-Chair of the Mayor of London's Violence Against Women and Girls Board

A rectangular photograph of a handwritten signature in black ink on a light-colored background. The signature is cursive and appears to read 'Rebecca Hitchen'.

Rebecca Hitchen Policy Officer, Rape Crisis England & Wales

The logo for Rape Crisis England & Wales. The word 'RAPE' is written in a bold, purple, sans-serif font. Below it, the word 'CRISIS' is written in a bold, green, sans-serif font. Underneath 'CRISIS', the words 'England & Wales' are written in a smaller, grey, sans-serif font.A rectangular photograph of a handwritten signature in black ink on a light-colored background. The signature is cursive and appears to read 'E. du Boulay'.

Estelle du Boulay Director, Rights of Women

The logo for Rights of Women. The words 'RIGHTS of' are written in a bold, green, sans-serif font. Below them, the word 'WOMEN' is written in a bold, purple, sans-serif font. Underneath 'WOMEN', the phrase 'helping women through the law' is written in a smaller, green, cursive font.

Fay Maxted

Fay Maxted CEO, The Survivors Trust

